

Attachment I

2015 Living Wage Act Notice

“THE LIVING WAGE ACT OF 2006”

Title I, D.C. Law No. 16-118, (D.C. Official Code §§ 2-220.01-.11)

Recipients of new contracts or government assistance shall pay affiliated employees and subcontractors who perform services under the contracts no less than the current living wage.

Effective January 1, 2015, the living wage rate is \$13.80.

The requirement to pay a living wage applies to:

- All recipients of contracts in the amount of \$100,000 or more; and, all subcontractors of these recipients receiving \$15,000 or more from the funds received by the recipient from the District of Columbia, and,
- All recipients of government assistance in the amount of \$100,000 or more; and, all subcontractors of these recipients of government assistance receiving \$50,000 or more in funds from government assistance received from the District of Columbia.

“Contract” means a written agreement between a recipient and the District government.

“Government assistance” means a grant, loan or tax increment financing that result in a financial benefit from an agency, commission, instrumentality, or other entity of the District government.

“Affiliated employee” means any individual employed by a recipient who received compensation directly from government assistance or a contract with the District of Columbia government, including any employee of a contractor or subcontractor of a recipient who performs services pursuant to government assistance or contract. The term “affiliated employee” does not include those individuals who perform only intermittent or incidental services with respect to the contract or government assistance or who are otherwise employed by the contractor, recipient or subcontractor.

Certain exceptions apply where contracts are subject to higher wage level determinations required by federal law; contracts delivered by regulated utility; contracts for services needed immediately to prevent or respond to a disaster or imminent threat to the public health or safety declared by the Mayor; contracts awarded to recipients that provide trainees with additional services provided the trainee does not replace employees; tenants or retail establishments that occupy property constructed or improved by government assistance, provided there is no receipt of direct District government assistance; Medicaid provider agreements for direct care services to Medicaid recipients, however, a home care agency, a community residential facility or a group home for persons with intellectual disabilities shall not be required to pay a living wage until implementing regulations are published in the D.C. Register and any necessary state plan amendments are approved; and contracts or other agreements between managed care organizations and the Health Care Safety Net Administration or the Medicaid Assistance Administration to provide health services.

Exemptions are provided for employees under 22 years of age employed during a school vacation period, or enrolled as a full-time student who works less than 25 hours per week, and for employees of nonprofit organizations that employ not more than 50 individuals.

Each recipient and subcontractor of a recipient shall provide this notice to each affiliate employee covered by this notice, and shall also post this notice in a conspicuous site in its place of business.

All recipients and subcontractors shall retain payroll records created and maintained in the regular course of business under District of Columbia law for a period of at least 3 years.

For the complete text of the Living Wage Act of 2006 go to D.C. Official Code §§ 2-220.01-.11

To file a claim, visit: Department of Employment Services , Office of Wage-Hour, 4058 Minnesota Avenue, NE, Fourth Floor, Washington, D.C. 20019; call: (202) 671-1880; or file your claim on-line: does.dc.gov. Go to “File a Claim” tab.

Attachment J

First Source Agreement Form



**GOVERNMENT OF THE DISTRICT OF COLUMBIA
FIRST SOURCE EMPLOYMENT AGREEMENT FOR
CONSTRUCTION PROJECTS ONLY**



GOVERNMENT-ASSISTED PROJECT/CONTRACT INFORMATION

CONTRACT/SOLICITATION NUMBER: _____
 DISTRICT CONTRACTING AGENCY: _____
 CONTRACTING OFFICER: _____
 TELEPHONE NUMBER: _____
 TOTAL CONTRACT AMOUNT: _____
 EMPLOYER CONTRACT AMOUNT: _____
 PROJECT NAME: _____
 PROJECT ADDRESS: _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 PROJECT START DATE: _____ PROJECT END DATE: _____
 EMPLOYER START DATE: _____ EMPLOYER END DATE: _____

EMPLOYER INFORMATION

EMPLOYER NAME: _____
 EMPLOYER ADDRESS: _____
 CITY: _____ STATE: _____ ZIP CODE: _____
 TELEPHONE NUMBER: _____ FEDERAL IDENTIFICATION NO.: _____
 CONTACT PERSON: _____
 TITLE: _____
 E-MAIL: _____ TELEPHONE NUMBER: _____
 LOCAL, SMALL, DISADVANTAGED BUSINESS ENTERPRISE (LSDBE) CERTIFICATION
 NUMBER: _____
 D.C. APPRENTICESHIP COUNCIL REGISTRATION NUMBER: _____
 ARE YOU A SUBCONTRACTOR YES NO IF YES, NAME OF PRIME
 CONTRACTOR: _____

This First Source Employment Agreement (Agreement), in accordance with Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2-219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431) for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, (DOES) and EMPLOYER. Pursuant to this Agreement, the EMPLOYER shall use DOES as its first source for recruitment, referral, and placement of new hires or employees for all new jobs created by the Government Assisted Project or Contract (Project). The EMPLOYER shall meet the hiring or hours worked percentage requirements for all new jobs created by the Project as outlined below in Section VII. The EMPLOYER shall ensure that District of Columbia residents (DC residents) registered in programs approved by the District of Columbia Apprenticeship Council shall work 35% of all apprenticeship hours worked in connection with the Project.

I. DEFINITIONS

The following definitions shall govern the terms used in this Agreement.

A. **Apprentice** means a worker who is employed to learn an apprentice able occupation under the terms and conditions of approved apprenticeship standards.

B. **Beneficiary** means:

1. The signatory to a contract executed by the Mayor which involves any District of

Columbia government funds, or funds which, in accordance with a federal grant or otherwise, the District government administers and which details the number and description of all jobs created by a government-assisted project or contract for which the beneficiary is required to use the First Source Register;

2. A recipient of a District government economic development action including contracts, grants, loans, tax abatements, land transfers for redevelopment, or tax increment financing that results in a financial benefit of \$300,000 or more from an agency, commission, instrumentality, or other entity of the District government, including a financial or banking institution which serves as the repository for \$1 million or more of District of Columbia funds.
3. A retail or commercial tenant that is a direct recipient of a District government economic development action, including contracts, grants, loans, tax abatements, land transfers for public redevelopment, or tax increment financing in excess of \$300,000.

- C. **Contracting Agency** means any District of Columbia agency that awarded a government assisted project or contract totaling \$300,000 or more.
- D. **Direct labor costs** means all costs, including wages and benefits, associated with the hiring and employment of personnel assigned to a process in which payroll expenses are traced to the units of output and are included in the cost of goods sold.
- E. **EMPLOYER** means any entity awarded a government assisted project or contract totaling \$300,000 or more.
- F. **First Source Employer Portal** means the website consisting of a connected group of static and dynamic (functional) pages and forms on the World Wide Web accessible by Uniform Resource Locator (URL) and maintained by DOES to provide information and reporting functionality to EMPLOYERS.
- G. **First Source Register** means the DOES Automated Applicant Files, which consists of the names of DC residents registered with DOES.
- H. **Good faith effort** means an EMPLOYER has exhausted all reasonable means to comply with any affirmative action, hiring, or contractual goal(s) pursuant to the First Source law and Agreement.
- I. **Government-assisted project or contract (Project)** means any construction or non-construction project or contract receiving funds or resources from the District of Columbia, or funds or resources which, in accordance with a federal grant or otherwise, the District of Columbia government administers, including contracts, grants, loans, tax abatements or exemptions, land transfers, land disposition and development agreements, tax increment financing, or any combination thereof, that is valued at \$300,000 or more.
- J. **Hard to employ** means a District of Columbia resident who is confirmed by DOES as:
1. An ex-offender who has been released from prison within the last 10 years;
 2. A participant of the Temporary Assistance for Needy Families program;
 3. A participant of the Supplemental Nutrition Assistance Program;
 4. Living with a permanent disability verified by the Social Security Administration or

District vocational rehabilitation program;

5. Unemployed for 6 months or more in the last 12-month period;
6. Homeless;
7. A participant or graduate of the Transitional Employment Program established by § 32-1331; or
8. An individual who qualified for inclusion in the Work Opportunity Tax Credit Program as certified by the Department of Employment Services.

K. **Indirect labor costs** means all costs, including wages and benefits, that are part of operating expenses and are associated with the hiring and employment of personnel assigned to tasks other than producing products.

L. **Jobs** means any union and non-union managerial, nonmanagerial, professional, nonprofessional, technical or nontechnical position including: clerical and sales occupations, service occupations, processing occupations, machine trade occupations, bench work occupations, structural work occupations, agricultural, fishery, forestry, and related occupations, and any other occupations as the Department of Employment Services may identify in the Dictionary of Occupational Titles, United States Department of Labor.

M. **Journeyman** means a worker who has attained a level of skill, abilities and competencies recognized within an industry as having mastered the skills and competencies required for the occupation.

N. **Revised Employment Plan** means a document prepared and submitted by the EMPLOYER that includes the following:

1. A projection of the total number of hours to be worked on the project or contract by trade;
2. A projection of the total number of journey worker hours, by trade, to be worked on the project or contract and the total number of journey worker hours, by trade, to be worked by DC residents;
3. A projection of the total number of apprentice hours, by trade, to be worked on the project or contract and the total number of apprentice hours, by trade, to be worked by DC residents;
4. A projection of the total number of skilled laborer hours, by trade, to be worked on the project or contract and the total number of skilled laborer hours, by trade, to be worked by DC residents;
5. A projection of the total number of common laborer hours to be worked on the project or contract and the total number of common laborer hours to be worked by DC residents;
6. A timetable outlining the total hours worked by trade over the life of the project or contract and an associated hiring schedule;
7. Descriptions of the skill requirements by job title or position, including industry-recognized certifications required for the different positions;

8. A strategy to fill the hours required to be worked by DC residents pursuant to this paragraph, including a component on communicating these requirements to contractors and subcontractors and a component on potential community outreach partnerships with the University of the District of Columbia, the University of the District of Columbia Community College, the Department of Employment Services, Jointly Funded Apprenticeship Programs, the District of Columbia Workforce Intermediary, or other government-approved, community-based job training providers;
 9. A remediation strategy to ameliorate any problems associated with meeting these hiring requirements, including any problems encountered with contractors and subcontractors;
 10. The designation of a senior official from the general contractor who will be responsible for implementing the hiring and reporting requirements;
 11. Descriptions of the health and retirement benefits that will be provided to DC residents working on the project or contract;
 12. A strategy to ensure that District residents who work on the project or contract receive ongoing employment and training opportunities after they complete work on the job for which they were initially hired and a review of past practices in continuing to employ DC residents from one project or contract to the next;
 13. A strategy to hire graduates of District of Columbia Public Schools, District of Columbia public charter schools, and community-based job training providers, and hard-to-employ residents; and
 14. A disclosure of past compliance with the Workforce Act and the Davis-Bacon Act, where applicable, and the bidder or offeror's general DC resident hiring practices on projects or contracts completed within the last 2 years.
- O. **Tier Subcontractor** means any contractor selected by the primary subcontractor to perform portion(s) or all work related to the trade or occupation area(s) on a contract or project subject to this First Source Agreement.
- P. **Washington Metropolitan Statistical Area** means the District of Columbia; Virginia Cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, and Manassas Park; the Virginia Counties of Arlington, Clarke, Fairfax, Fauquier, Loudon, Prince William, Spotsylvania, Stafford, and Warren; the Maryland Counties of Calvert, Charles, Frederick, Montgomery and Prince Georges; and the West Virginia County of Jefferson.
- Q. **Workforce Intermediary Pilot Program** means the intermediary between employers and training providers to provide employers with qualified DC resident job applicants. See DC Official Code § 2-219.04b.

II. GENERAL TERMS

- A. Subject to the terms and conditions set forth herein, DOES will receive the Agreement from the Contracting Agency no less than 7 calendar days in advance of the Project start date, whichever is later. No work associated with the relevant Project can begin until the Agreement has been accepted by DOES.
- B. The EMPLOYER will require all Project contractors and Project subcontractors with contracts or subcontracts totaling \$300,000 or more to enter into an Agreement with DOES.

- C. DOES will provide recruitment, referral, and placement services to the EMPLOYER, subject to the limitations in this Agreement.
- D. This Agreement will take effect when signed by the parties below and will be fully effective through the duration, any extension or modification of the Project and until such time as construction is complete and a certificate of occupancy is issued.
- E. DOES and the EMPLOYER agree that, for purposes of this Agreement, new hires and jobs created for the Project (both union and nonunion) include all of EMPLOYER'S job openings and vacancies in the Washington Metropolitan Statistical Area created for the Project as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this Project, including loans, lease agreements, zoning applications, bonds, bids, and contracts.
- F. This Agreement includes apprentices as defined in D.C. Official Code §§ 32-1401- 1431.
- G. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any collective bargaining unit involved with this Project a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES.
- H. The EMPLOYER who contracts with the District of Columbia government to perform construction, renovation work, or information technology work with a single contract, or cumulative contracts, of at least \$500,000, let within a 12-month period will be required to register an apprenticeship program with the District of Columbia Apprenticeship Council as required by DC Code 32-1431.
- I. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise this First Source Agreement shall remain in full force and effect and transferee shall remain subject to all provisions herein. In addition, the EMPLOYER as a condition of transfer shall:
 - 1. Notify the party taking possession of the existence of this EMPLOYER'S First Source Employment Agreement.
 - 2. Notify DOES within 7 business days of the transfer. This notice will include the name of the party taking possession and the name and telephone of that party's representative.
- J. The EMPLOYER and DOES may mutually agree to modify this Agreement. Any modification shall be in writing, signed by the EMPLOYER and DOES and attached to the original Agreement.
- K. To the extent that this Agreement is in conflict with any federal labor laws or governmental regulations, the federal laws or regulations shall prevail.

III. TRAINING

- A. DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs as approved by DOES; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and will be set forth in a separate

Training Agreement.

IV. RECRUITMENT

- A. The EMPLOYER will complete the attached Revised Employment Plan that will include the information outlined in Section I.N., above.
- B. The EMPLOYER will post all job vacancies with the Job Bank Services of DOES at <http://does.dc.gov> within 7 days of executing the Agreement. Should you need assistance posting job vacancies, please contact Job Bank Services at (202) 698-6001.
- C. The EMPLOYER will notify DOES of all new jobs created for the Project within at least 7 business days (Monday - Friday) of the EMPLOYERS' identification/creation of the new jobs. The Notice of New Job Creation shall include the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed. This must be done before using any other referral source.
- D. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce shall be reported to DOES for placement and referral, if the job is newly created. EMPLOYER shall provide DOES a Notice of New Job Creation that details such promotions in accordance with Section IV.C.
- E. The EMPLOYER will submit to DOES, prior to commencing work on the Project, a list of Current Employees that includes the name, social security number, and residency status of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the Project. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.

V. REFERRAL

- A. DOES will screen applicants through carefully planned recruitment and training events and provide the EMPLOYER with a list of qualified applicants according to the number of employees needed by job title, qualifications and specific skills required to perform the job, hiring date, rate of pay, hours of work, duration of employment, and a description of the work to be performed as supplied by the EMPLOYER in its Notice set forth above in Section IV.C.
- B. DOES will notify the EMPLOYER of the number of applicants DOES will refer, prior to the anticipated hiring dates.

VI. PLACEMENT

- A. EMPLOYER shall in good faith, use reasonable efforts to select its new hires or employees from among the qualified applicants referred by DOES. All hiring decisions are made by the EMPLOYER.
- B. In the event that DOES is unable to refer qualified applicants meeting the EMPLOYER'S established qualifications, within 7 business days (Monday - Friday) from the date of notification from the EMPLOYER, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred. The EMPLOYER will still be required to meet the hiring or hours worked percentages for all new jobs created by the Project.

- C. After the EMPLOYER has selected its employees, DOES is not responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions.

VII. REPORTING REQUIREMENTS

- A. EMPLOYER is given the choice to report hiring or hours worked percentages either by Prime Contractor for the entire Project or per each Sub-contractor.
- B. EMPLOYER with Projects valued at a minimum of \$300,000 shall hire DC residents for at least 51% of all new jobs created by the Project.
- C. EMPLOYER with Projects totaling \$5 million or more shall meet the following hours worked percentages for all new jobs created by the Project:
 - 1. At least 20% of journey worker hours by trade shall be performed by DC residents;
 - 2. At least 60% of apprentice hours by trade shall be performed by DC residents;
 - 3. At least 51% of the skilled laborer hours by trade shall be performed by DC residents; and
 - 4. At least 70% of common laborer hours shall be performed by DC residents.
- D. EMPLOYER shall have a user name and password for the First Source Employer Portal for electronic submission of all monthly Contract Compliance Forms, weekly certified payrolls and any other documents required by DOES for reporting and monitoring.
- E. EMPLOYER with Projects valued at a minimum of \$300,000 shall provide the following monthly and cumulative statistics on the Contract Compliance Form:
 - 1. Number of new job openings created/available;
 - 2. Number of new job openings listed with DOES, or any other District Agency;
 - 3. Number of DC residents hired for new jobs;
 - 4. Number of employees transferred to the Project;
 - 5. Number of DC residents transferred to the Project;
 - 6. Direct or indirect labor cost associated with the project;
 - 7. Each employee's name, job title, social security number, hire date, residence, and referral source; and
 - 8. Workforce statistics throughout the entire project tenure.
- F. In addition to the reporting requirements outlined in E, EMPLOYER with Projects totaling \$5 million or more shall provide the following monthly and cumulative statistics on the Contract Compliance Form:
 - 1. Number of journey worker hours worked by DC residents by trade;
 - 2. Number of hours worked by all journey workers by trade;
 - 3. Number of apprentice hours worked by DC residents by trade;
 - 4. Number of hours worked by all apprentices by trade;
 - 5. Number of skilled laborer worker hours worked by DC residents by trade;
 - 6. Number of hours worked by all skilled laborers by trade;
 - 7. Number of common laborer hours worked by DC residents by trade; and
 - 8. Number of hours worked by all common laborers by trade.

- G. EMPLOYER can “double count” hours for the “hard to employ” up to 15% of total hours worked by DC Residents.
- H. For construction Projects that are not subject to Davis-Bacon law in which certified payroll records do not exist, EMPLOYER must submit monthly documents of workers employed on the Project to DOES, including DC residents and all employment classifications of hours worked.
- I. EMPLOYER may also be required to provide verification of hours worked or hiring percentages of DC residents, such as internal payroll records for construction Projects that are not subject to Davis-Bacon.
- J. Monthly, EMPLOYER must submit weekly certified payrolls from all subcontractors at any tier working on the Project to the Contracting Agency. EMPLOYER is also required to make payroll records available to DOES as a part of compliance monitoring, upon request at job sites.

VIII. FINAL REPORT AND GOOD FAITH EFFORTS

- A. With the submission of the final request for payment from the Contracting Agency, the EMPLOYER shall:
 - 1. Document in a report to DOES its compliance with the hiring or hours worked percentage requirements for all new jobs created by the Project and the percentages of DC residents employed in all Trade Classifications, for each area of the Project; or
 - 2. Submit to DOES a request for a waiver of the hiring or hours worked percentage requirements for all new jobs created by the Project that will include the following documentation:
 - a. Documentation supporting EMPLOYER’S good faith effort to comply;
 - b. Referrals provided by DOES and other referral sources; and
 - c. Advertisement of job openings listed with DOES and other referral sources.
- B. DOES may waive the hiring or hours worked percentage requirements for all new jobs created by the Project, and/or the required percentages of DC residents in all Trade Classifications areas on the Project, if DOES finds that:
 - 1. EMPLOYER demonstrated a good faith effort to comply, as set forth in Section C, below; or
 - 2. EMPLOYER is located outside the Washington Metropolitan Statistical Area and none of the contract work is performed inside the Washington Metropolitan Statistical Area.
 - 3. EMPLOYER entered into a special workforce development training or placement arrangement with DOES or with the District of Columbia Workforce Intermediary; or
 - 4. DOES certified that there are insufficient numbers of DC residents in the labor market possessing the skills required by the EMPLOYER for the positions created as a result of the Project. No failure by Employer to request a waiver under any other provision hereunder shall be considered relevant to a requested waiver under this Subsection.
- C. DOES shall consider documentation of the following when making a determination of a

good-faith effort to comply:

1. Whether the EMPLOYER posted the jobs on the DOES job website for a minimum of 10 calendar days;
2. Whether the EMPLOYER advertised each job opening in a District newspaper with city-wide circulation for a minimum of 7 calendar days;
3. Whether the EMPLOYER advertised each job opening in special interest publications and on special interest media for a minimum of 7 calendar days;
4. Whether the EMPLOYER hosted informational/recruiting or hiring fairs;
5. Whether the EMPLOYER contacted churches, unions, and/or additional Workforce Development Organizations;
6. Whether the EMPLOYER interviewed employable candidates;
7. Whether the EMPLOYER created or participated in a workforce development program approved by DOES;
8. Whether the EMPLOYER created or participated in a workforce development program approved by the District of Columbia Workforce Intermediary;
9. Whether the EMPLOYER substantially complied with the relevant monthly reporting requirements set forth in this section;
10. Whether the EMPLOYER has submitted and substantially complied with its most recent employment plan that has been approved by DOES; and
11. Any additional documented efforts.

IX. MONITORING

- A. DOES is the District agency authorized to monitor and enforce the requirements of the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (D.C. Official Code §§ 2 219.01 – 2.219.05), and relevant provisions of the Apprenticeship Requirements Amendment Act of 2004 (D.C. Official Code § 2-219.03 and § 32-1431). As a part of monitoring and enforcement, DOES may require and EMPLOYER shall grant access to Project sites, employees, and documents.
- B. EMPLOYER'S noncompliance with the provisions of this Agreement may result in the imposition of penalties.
- C. All EMPLOYER information reviewed or gathered, including social security numbers, as a result of DOES' monitoring and enforcement activities will be held confidential in accordance with all District and federal confidentiality and privacy laws and used only for the purposes that it was reviewed or gathered.
- D. DOES shall monitor all Projects as authorized by law. DOES will:
 1. Review all contract controls to determine if Prime Contractors and Subcontractors are subject to DC Law 14-24.

2. Notify stakeholders and company officials and establish meetings to provide technical assistance involving the First Source Process.
3. Make regular construction site visits to determine if the Prime or Subcontractors' workforce is in concurrence with the submitted Agreement and Monthly Compliance Reports.
4. Inspect and copy certified payroll, personnel records and any other records or information necessary to ensure the required workforce utilization is in compliance with the First Source Law.
5. Conduct desk reviews of *Monthly Compliance Reports*.
6. Educate EMPLOYERS about additional services offered by DOES, such as On-the-Job training programs and tax incentives for EMPLOYERS who hire from certain categories.
7. Monitor and complete statistical reports that identify the overall project, contractor, and sub contractors' hiring or hours worked percentages.
8. Provide formal notification of non-compliance with the required hiring or hours worked percentages, or any alleged breach of the First Source Law to all contracting agencies, and stakeholders. ***(Please note: EMPLOYERS are granted 30 days to correct any alleged deficiencies stated in the notification.)***

X. PENALTIES

- A. Willful breach of the Agreement by the EMPLOYER, failure to submit the Contract Compliance Reports, deliberate submission of falsified data or failure to reach specific hiring or hours worked requirements may result in DOES imposing a fine of 5% of the total amount of the direct and indirect labor costs of the contract for the positions created by EMPLOYER. Fines will also include additional prorated fines of 1/8 of 1% of total contract amount for not reaching specific hiring or hours worked requirements. Prime Contractors who choose to report all hiring or hours worked percentages cumulatively (overall construction project) will be penalized, if hiring or hours worked percentage requirements are not met.
- B. EMPLOYERS who have been found in violation 2 times or more over a 10 year period may be debarred and/or deemed ineligible for consideration for Projects for a period of 5 years.
- C. Appeals of violations or fines are to be filed with the Contract Appeals Board.

I hereby certify that I have the authority to bind the EMPLOYER to this Agreement.

By:

EMPLOYER Senior Official

Name of Company

Address

Telephone

Email

Associate Director for First Source
Department of Employment Services
4058 Minnesota Avenue, NE
Third Floor
Washington, DC 20019
202-698-6284
firstsource@dc.gov

Date

EMPLOYMENT PLAN

NAME OF EMPLOYER: _____

ADDRESS OF EMPLOYER: _____

TELEPHONE NUMBER: _____ FEDERAL IDENTIFICATION NO.: _____

CONTACT PERSON: _____ TITLE: _____

E-MAIL: _____ TYPE OF BUSINESS: _____

DISTRICT CONTRACTING AGENCY: _____

CONTRACTING OFFICER: _____ TELEPHONE NUMBER: _____

TYPE OF PROJECT: _____ CONTRACT AMOUNT: _____

EMPLOYER CONTRACT AMOUNT: _____

PROJECT START DATE: _____ PROJECT END DATE: _____

EMPLOYER START DATE: _____ EMPLOYER END DATE: _____

NEW JOB CREATION PROJECTIONS: Please indicate ALL new position(s) your firm will create as a result of the Project. If the firm WILL NOT be creating any new employment opportunities, please complete the attached justification sheet with an explanation. Attach additional sheets as needed.

	JOB TITLE	# OF JOBS		SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
		F/T	P/T			
A						
B						
C						
D						
E						
F						
G						
H						
I						
J						
K						

Attachment K

Form of Contract

CONSTRUCTION AGREEMENT

CONSTRUCTION SERVICES FOR MADISON SHELTER RENOVATION

CONTRACT NO. DCAM-15-CS-0165

THIS AGREEMENT (“Agreement” Or “Contract”) is made by and between the **DISTRICT OF COLUMBIA GOVERNMENT**, acting by and through its **DEPARTMENT OF GENERAL SERVICES** (the “Department” or “DGS”) and _____ duly organized under the laws of the **DISTRICT OF COLUMBIA**, and with a place of business at _____ (the “Contractor”). Once this Agreement is executed by the Department of General Services without modification of any kind, it will serve as a Notice to Proceed with the work described below.

WITNESSETH:

WHEREAS, the Department of General Services (DGS) is seeking a contractor to provide labor, supervision, supplies, equipment and other services to provide construction services for the Madison Shelter Renovation in the Department of General Services (DGS) Capital Construction Division, located on the 4th Floor at 1250 U Street, Washington DC Washington DC, 20009;

WHEREAS, the Contractor was selected in response to RFP Solicitation No. DCAM-15-CS-0139 to provide the construction and related services necessary to complete the Project, subject to the terms and conditions set forth in the Agreement;

NOW, THEREFORE, the Department and Contractor, for the consideration set forth herein, mutually agree as follows:

**ARTICLE 1
NATURE OF AGREEMENT**

Section 1.1 Relationships of Parties. The Contractor accepts the relationship of trust and confidence established with the Department by this Agreement, and covenants with the Department to furnish the Contractor’s reasonable skill and judgment and to cooperate with the Department’s Project Manager in furthering the interests of the Department. The Contractor shall use its best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Department. The Department shall endeavor to promote harmony and cooperation among the Department, Contractor, Project Manager, and other persons or entities employed by the Department for the Project. In performing its duties under this Contract, the Contractor shall at all times use the standard of care used by Contractors that renovate or construct facilities such as the Project in large, urban areas. Whenever the term

“competent” is used herein to describe the Contractor’s actions or duties that term shall refer to the level of competence customarily possessed by those Contractors that renovate or construct facilities such as the Project in large urban areas.

Section 1.2 Project Description. The work to be performed shall be in accordance with the Department of Forensic Sciences (DFS) Consolidated Forensic Laboratory (CFL) Drawings and Specifications titled, DEU Drawings and dated December 4, 2014.

Section 1.3 Project Manager. The Department’s Project Manager shall provide certain program management functions. The Project Manager shall, at all times, act solely for the benefit of the Department, not the Contractor. The Contractor acknowledges that the Project Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives. **The Contractor hereby acknowledges and agrees that only a duly authorized Contracting Officer of the Department shall have the authority to issue Change Orders or Change Directives on the Department’s behalf. The Department’s duly authorized Contracting Officers are Brian J. Hanlon and JW Lanum.**

Section 1.4 General Description of Contractor’s Duties. The Contractor shall perform the services described in Articles 2 and 3. The Contractor shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services, and supervision, and shall bear all items of expense, necessary to complete and satisfactorily perform this Contract, except such items that the Department, in this Contract, specifically agrees to supply or furnish to or for the use of Contractor. Any labor, materials, equipment, tools, services or supervision not specifically described in this Contract, but which may be fairly implied as required thereby or necessary to properly complete the Contract Work, shall be deemed within the scope of the Contract Work and shall be provided by Contractor at Contractor’s sole expense.

Section 1.5 CBE Status. The parties acknowledge that this Contract is awarded pursuant to the IFB on which only Bidders certified by District of Columbia Department of Small and Local Business Development (“DSLBD”) as a Certified Business Enterprise (“CBE”) were eligible to bid. The Contractor has represented to the Department that it is a CBE, as determined by DSLBD. The Contractor shall maintain its status as a CBE throughout the Term of this Contract. Should the Contractor lose its status as a CBE for any reason other than that the expiration of the certification period, the Contractor shall promptly notify the Department. Should the Contractor’s certification as a CBE expire, the Contractor shall promptly refile if eligible to do so. If the Contractor is no longer eligible for recertification, the Contractor shall promptly advise the Department of its ineligibility for recertification. The Department may terminate this Contract if the Contractor loses its status as a CBE and is ineligible for recertification.

ARTICLE 2 GENERAL PROVISIONS

Section 2.1 Preconstruction and Construction Services. Throughout the Preconstruction and Construction Phase, the Contractor shall perform the project-related tasks

delineated in the IFB, Addenda, Drawings and Specifications, and other documents necessary to fully complete the project.

Section 2.2 Project Schedule. The Parties have agreed upon a schedule for the Project. The Project Schedule is based on a critical path method of scheduling and includes various activities, the duration of each, and the logical relationships between such activities. All parties to this Agreement understand and agree that the Project Schedule that has been agreed to is not a contract document and rather is intended to serve as a management tool. All parties further acknowledge and agree that adjustments will be required to activities, their duration and sequencing in order to accomplish the Project's objectives and end-dates. In furtherance of the foregoing, the Contractor further understands and agrees that it shall only be entitled to request an adjustment to the Completion Date if an Excusable Delay, as such term is defined below, occurs and such delay is promptly brought to DGS' attention. The Contractor further understands and agrees that this Agreement has a "no damages for delay" clause and that the Contractor shall only be entitled to compensation for Excusable Delay as set forth in **Article 6** of this Agreement. The Project Schedule shall be maintained and updated during the Preconstruction and Construction Phases per the direction of the Project Manager.

Section 2.3 Responsibility for Agents and Contractors. At all times and during both the Preconstruction and Construction Phases, the Contractor shall be responsible to the Department for any and all acts and omissions of the Contractor's agents, employees, Subcontractors, Sub-Subcontractors, material suppliers, and laborers, and the agents and employees of the Subcontractors, Sub-Subcontractors, material suppliers, and laborers performing or supplying Work in connection with the Project. This **Section 2.3** shall apply during both the Preconstruction and Construction Phases.

Section 2.4 Review of Means and Methods. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof during the preconstruction phase and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Department during the Preconstruction Phase and shall not proceed with that portion of the Work without further written instructions from the Department. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Department shall be solely responsible for any loss or damage arising solely from those Department-required means, methods, techniques, sequences or procedures.

Section 2.5 Field Measurements. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to Department in writing prior to the performance of the work. Once work is started, the Contractor assumes the responsibility and costs for the work and the cost of correcting work previously installed.

Section 2.6 Completion Date. Subject to the Excusable Delay provisions of this Agreement, the Contractor agrees to fully complete the Project no later than Twelve (12) weeks from the fully executed Agreement.

Section 2.7 Project Manager. The Department's Project Manager shall provide certain program management functions. The Project Manager shall, at all times, act solely for the benefit of the Department, not the Contractor. The Contractor acknowledges that the Project Manager is not authorized to modify any of the rights or obligations of the Department or the Contractor pursuant to this Contract, or to issue Change Orders or Change Directives. **The Contractor hereby acknowledges and agrees that only a duly authorized Contracting Officer of the Department shall have the authority to issue Change Orders or Change Directives on the Department's behalf. The Department's duly authorizing Contracting Officers are Brian J. Hanlon and JW Lanum.**

Section 2.8 Prolog. The Contractor shall utilize the Department's Prolog system to submit any and all documentation required to be provided by the Contractor for the Project, including, but not limited to, (i) requests for information; (ii) submittals; (iii) meeting minutes; (iv) proposed Changes; and (v) applications for payment. The Contractor also shall require all major subcontractors and subconsultants to utilize Prolog for the Project.

Section 2.9 Central Office. During the Term of this Contract, the Contractor shall maintain a central office that is staffed between the hours of 7am - 5pm Monday through Friday. This office will be used to manage work associated with this Agreement. A separate office need not be established, and is acceptable if the Contractor elects to run this project from its current office. The office shall be equipped with telephone lines, a fax machine, email, and such other equipment and supplies as are necessary to fulfill the work required under the Agreement.

Section 2.10 Working Hours. The work may be performed during normal business hours; however, the Contractor may be required to work after hours or on weekends and holidays as to not adversely impact the work of the District of Columbia employees/and or Contractors. The Contractor shall be required to develop work plans that are coordinated with, and acceptable to, the Project Manager.

ARTICLE 3 **CONSTRUCTION**

Section 3.1 General. The Contractor shall, through Subcontractors or its own forces, perform all of the Work necessary to construct the Project so that it is complete, safe, and properly built in strict accordance with the Contract Documents. Without limitation, the Contractor shall provide all of the labor, materials, tools, equipment, temporary services, and facilities necessary to complete the construction and installation of the Project. The Work shall be carried out in a good and workmanlike, first-class manner, and in timely fashion. All materials and equipment to be incorporated into the Project shall be new and previously unused, unless otherwise specified, and shall be free of manufacturing or other defects. The Contractor

further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Department, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Section 3.2 Subcontracting and Administration

Section 3.2.1 It is understood that the Contractor may, subject to the term of this Agreement, subcontract a portion of the work to a Subcontractor pursuant to written contract with the Contractor; provided, however, that the Contractor shall not be permitted to subcontract all or substantially all of the Work to a single Subcontractor.

Section 3.2.2 The Department may at any time direct the Contractor to terminate any Subcontractor or supplier performing services on the job.

Section 3.2.3 The Department may elect to review the form of any such subcontract or agreement with a material supplier to insure that such contract incorporates the contractual provisions required by this Agreement.

Section 3.2.4 The Contractor shall solidify all services and materials for the Project over \$25,000 (other than Self-Performed Work) via written subcontracts or, for contracts requiring provision of materials or equipment only, and not labor, via written supply agreements. All subcontracts and supply agreements shall include the following provisions:

Section 3.2.5 The Contractor agrees that all of its subcontracts and supply agreements for Work to be performed within the scope of this Agreement shall include the following provisions:

Section 3.2.5.1 that, to the extent of the Work or supply within the Agreement's scope, the Subcontractor or supplier is bound to the Contractor for the performance of all obligations which the Contractor owes the Department under the Contract;

Section 3.2.5.2 that the Subcontractor or supplier is not in privity with the Department and shall not seek compensation directly from the Department on any third-party beneficiary, quantum meruit, or unjust enrichment claim, or otherwise, except as may be permitted by any applicable mechanic's lien law;

Section 3.2.5.3 that the Department is a third-party beneficiary of the subcontract or supply agreement, entitled to enforce any rights thereunder for its benefit;

Section 3.2.5.4 that the Subcontractor or supplier consents to assignment of its agreement to the Department, at the Department's sole option, if the Contractor is terminated for default;

Section 3.2.5.5 that the Subcontractor or supplier shall comply immediately with a written order from the Department to the Contractor to suspend or stop work;

Section 3.2.5.6 that the Subcontractor or supplier shall maintain records of all Work it is requested or authorized to do on a time and material or cost-plus basis, or with respect to claims that it has asserted on a time and materials or cost-plus basis, during the Project and for a period of time specified in the General Conditions and requiring the Subcontractor or supplier to make those records available for review or audit by the Department during that time;

Section 3.2.5.7 that the Subcontractor shall obtain and maintain, throughout the Project, workers' compensation insurance in accordance with the laws of the District of Columbia (This provision is not applicable to supply agreements.);

Section 3.2.5.8 that, if the Department terminates the Contract for convenience, the Contractor may similarly terminate the subcontract or supply agreement for convenience, upon seven (7) days' written notice to the Subcontractor or supplier, and that the Subcontractor or supplier shall, in such a case, be entitled only to the costs set forth in the Termination for Convenience provisions of this Agreement;

Section 3.2.5.9 that the Department shall have the right to enter into a contract with the Subcontractor or supplier for the same price as its subcontract or supply agreement price less amounts already paid, if the Contractor files a voluntary petition in bankruptcy or has an involuntary petition in bankruptcy filed against it;

Section 3.2.5.10 that the Subcontractor or supplier shall not be entitled to payment for defective or non-conforming work, materials or equipment, and shall be obligated promptly to repair or replace non-conforming work, materials or equipment at its own cost;

Section 3.2.5.11 that Subcontractors and suppliers promptly pay Subcontractors and suppliers at lower tiers, imposing upon the Subcontractors and suppliers a duty to pay interest on late payments, and barring reimbursement for interest paid to lower tier Subcontractors or suppliers due to a Subcontractor's or supplier's failure to pay them in timely fashion;

Section 3.2.5.12 that all Subcontractors at all tiers comply with the provisions of **Article 11** (Economic Inclusion Goals); provided, however, that the Contractor may, in its reasonable discretion impose a different LSDBE subcontracting goal on some or all of its Subcontractors; provided, further, however, that nothing in this provision shall be deemed to excuse the Contractor from using its best efforts to achieve the LSDBE subcontracting goal on an aggregate basis for the Project;

Section 3.2.5.13 that allow the Contractor to withhold payment from the Subcontractor if the Subcontractor does not meet the requirements of the Subcontract;

Section 3.2.5.14 that require a lien and claim release as well as waiver provisions substantially identical to those in this Agreement.

Section 3.2.6 Within seven (7) days of receiving any payment from the Department including amounts attributable to Work performed, or materials or equipment supplied, by a Subcontractor or supplier, the Contractor shall either pay the Subcontractor or supplier for its proportionate share of the amount paid to the Contractor for the Subcontractor's or supplier's Work or materials or equipment, or notify the Department and the Subcontractor or supplier, in writing, of the Contractor's intention to withhold all or part of the payment and state the reason for the withholding. All monies paid to the Contractor under the Contract shall be used first to pay amounts due to Subcontractors or suppliers supplying labor or materials for the Project and only money remaining after such payments are made may be retained by the Contractor. Monies paid by joint check shall be deemed to have been paid fully to the Subcontractor or supplier named as a joint payee, unless the Department agrees otherwise in writing. Any interest paid to Subcontractors or suppliers because the Contractor has failed to pay them in timely fashion shall not entitle the Contractor to a Change Order.

Section 3.2.7 The Contractor shall not substitute or replace any Subcontractor or supplier certified by the District of Columbia Department of Small and Local Business Development without the Department's prior written consent.

Section 3.2.8 The Department has the right to contact Subcontractors or suppliers at all tiers or material or equipment suppliers directly to confirm amounts due and owing to them or amounts paid to them for Work on the Project, and to ascertain from the Subcontractors or suppliers at all tiers their projections of the cost to complete their Work or to supply their material or equipment, or the existence of any claims or disputes. In doing so the Department shall not issue any directions to Subcontractors or suppliers at any tier.

Section 3.3 **Progress Meetings.** The Contractor shall schedule and conduct, at a minimum, bi-weekly progress meetings at which the Department, the Project Manager, the Contractor and appropriate Subcontractors can discuss the status of the Work. The Contractor shall prepare and promptly distribute meeting minutes.

Section 3.4 **Written Reports.** The Contractor shall provide written reports to the Project Manager on the progress of the entire Work in accordance at least every other week. The Contractor shall also maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, major equipment on the site, Work accomplished, problems encountered and other similar relevant data as the Department may reasonably require. The log shall be available to the Department, and the Project Manager. The Contractor and its subcontractors and subconsultants shall be required to use Primavera 6 Prolog as a document management tool for this Project.

Section 3.5 **Cost Control System.** The Contractor shall maintain accurate records of the Cost of the Work. Where Work is being performed on a time and materials bases or to be funding through an allowance in the Lump Sum Price, the Contractor shall identify variances between actual and estimated costs and report the variances to the Department and the Project Manager at regular intervals.

Section 3.6 Key Personnel. Contractor's key personnel shall include **(i) the Project Executive; (ii) Project Manager; and a (iii) Safety Manager.** The Contractor's obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the key personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with the Contract due to death, illness, discharge or resignation, then the Contractor shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

Section 3.7 Qualified Personnel/Cooperation. The Contractor shall employ on the Project only those employees and Subcontractors who will work together in harmony and who will cooperate with one another on the Project. The Contractor shall enforce strict discipline, good order and harmony among its employees and its Subcontractors and shall remove from the site any person who is unfit for the work or fails to conduct himself or herself in a proper and cooperative manner. If the Department requests removal of any person as unfit or as having behaved inappropriately, the Contractor shall promptly comply.

Section 3.8 Work by Separate Contractors.

Section 3.8.1 The Department reserves the right to perform construction or operations related to the Project with Department's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site.

Section 3.8.2 Contractor shall afford Department and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate Contractor's construction and operations with theirs as Department may reasonably require.

Section 3.8.3 The Contractor shall coordinate its Work with work performed by the Department's own forces or separate contractors. The Contractor shall participate with other separate contractors and the Department in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Department until subsequently revised.

Section 3.8.4 If part of the Work depends for proper execution or results upon construction or operations by the Department or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Department apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Department's or separate contractors completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

Section 3.8.5 The Contractor shall reimburse the Department for costs the Department incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Department shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

Section 3.8.6 If a dispute arises among the Contractor and separate contractors as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Department may clean up and allocate the cost among those responsible.

Section 3.9 Cutting and Patching. The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Department or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Department or a separate contractor except with written consent of the Department and of such separate contractor; such consent shall not be unreasonably withheld.

Section 3.10 Site Safety and Clean-Up.

Section 3.10.1 The Contractor, at no additional cost to the Department, shall provide such safety barricades, enclosures and overhead protection as may reasonably be required by the Department and as may be necessary to safely implement the Work and to remove such at the end of the work and shall leave the site in broom clean condition.

Section 3.10.2 The Contractor shall be responsible for site security and shall employ if necessary, at its own expense, watchpersons to safeguard the site.

Section 3.10.3 The Contractor shall be responsible for the cost of temporary power used during the construction of the Project, including, but not limited to, the cost of installing such temporary wiring as may be required to bring power to the site. The Contractor shall also be responsible for the cost of all temporary construction necessary on the site.

Section 3.10.4 Illumination of the worksite during non-daylight hours is required of the Contractor at the Contractor's expense. The Contractor shall ensure that the extent and intensity of lighting match or exceed existing lighting conditions.

Section 3.10.5 The Contractor shall clean surfaces and remove surface finishes as needed to install new work and finishes and unless otherwise noted the new finish shall match the existing.

Section 3.10.6 The Contractor shall remove abandoned items and items serving no useful

purpose, such as abandoned piping, conduit, wiring, electrical devices and any other items. However, before any appurtenance removal the work shall be coordinated with the DGS Project Manager.

Section 3.11 Close-out.

Section 3.11.1 The Contractor shall be required to prepare and submit contract close-out documents including, but not limited to a complete set of equipment operation and maintenance manuals, shop drawings, field reports, warranties, inspection reports, and record drawings to assist the Department in operating the building.

Section 3.12 Partial Use or Occupancy.

Section 3.12.1 The Department may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Department and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a punch list to the Project Manager. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Department and Contractor or, if no agreement is reached, by decision of the Project Manager.

Section 3.12.2 Immediately prior to such partial occupancy or use, the Department, Contractor and Project Manager shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

Section 3.12.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work that does not comply with the requirements of the Contract Documents.

Section 3.13 Correction of Work.

Section 3.13.1 The Department shall be at liberty to object and to require the Contractor to remove forthwith from the Project site and the Work and to promptly replace the Superintendent, any foreman, technical assistant, laborer, agent, representative, or other person used by the Contractor in or about the execution or maintenance of the Work, who in the sole opinion of the Department is misconducting himself or herself, or is incompetent or negligent in the proper performance of his or her duties, or whose performance in the Work is otherwise considered by the Department to be undesirable or unsatisfactory, and such person shall not be again employed upon the Project without the written permission of the Department.

Section 3.13.2 The Contractor shall promptly correct Work rejected by the Department for failing to conform to the requirements of the Contract Documents or applicable law or regulations whether observed before or after Final Completion and whether or not fabricated, installed or completed, and shall correct any Work that fails to comply with the requirements of the Contract Documents within a period of one (1) year from the date of Final Completion or by terms of an applicable special warranty required by the Contract Documents. The provisions of this Section 4.13 apply to Work done by Subcontractors as well as to Work done by direct employees of Contractor. Contractor shall bear costs of correcting such Work, including additional testing and inspections and compensation for the Department's services and expenses made necessary thereby.

Section 3.13.3 The Department shall have the right, in lieu of terminating this Agreement, to take over a part or all of the Work and complete the Work. For Work that is deleted from the Contractor's obligations under this Agreement, Contractor shall provide a credit to the Department for work deleted plus its profit for Work not performed. However, for any Work that is rejected by the Department or Project Manager, in writing, the Contractor shall have three (3) days from the date of the letter notification ("Cure Notice") to state whether it intends to cure the work and provide a plan and schedule for correction. If the Contractor agrees to cure the work that is the subject of the cure notice, then it will have five (5) days within which to submit a plan and schedule for the approval of the Department. In the event that the Contractor refuses to respond or the Department rejects the plan, then the Department may take over and complete the Work and all costs of this Work plus twenty percent (20%) shall be deducted from any amounts due to the Contractor. If the Department is determined to have wrongfully exercised this right to carry out the Work, the Contractor's sole remedy shall be compensation as provided under Section 14. 3 of this Agreement for termination by the Department for convenience. If Contractor fails to comply with written directive from the Department, the failure shall be a material default of this Agreement and the Department's right to complete all or a portion of the Work does not waive this right.

Section 3.13.4 Nothing contained in this Article 4 shall be construed to establish a period of limitation with respect to obligations which Contractor might otherwise have under the Contract Documents or under law.

Section 3.13.5 If during the guarantee or warranty period, any material, equipment or system requires corrective Work because of defects in materials or workmanship, Contractor shall commence corrective Work within forty-eight (48) hours after receiving the notice and work diligently until corrective Work is completed; provided, however, if such notice is received on the day before a weekend or a holiday, Contractor will commence corrective Work on the next business day. If Contractor does not, in accordance with the terms and provisions of the Contract Documents, commence all corrective Work within forty-eight (48) hours or if Contractor commences such Work but does not pursue it in an expeditious manner, Department may either notify the bonding company (if any) to have such Work and/or obligations performed at no additional cost to Department or may perform such Work and/or obligations and charge the costs thereof to Contractor. The Contractor shall correct any defects noted by Department. The

obligations of Contractor or any Subcontractor under the terms and provisions of the Contract Documents shall not be limited to the payments made by the surety (if any) under the provisions of this Agreement. Ten (10) months following Substantial Completion, Contractor shall accompany Department on an inspection of the Project, and Contractor shall promptly correct any defective Work or non-conforming Work.

Section 3.14 Manufacturers' Warranties.

Section 3.14.1 Contractor warrants that all manufacturers' or other warranties on all labor, materials and equipment furnished by the Contractor or a Subcontractor or supplier shall run directly to or will be specifically assigned to the Department on demand or upon Final Completion of the Project without demand. In the event any issue or defect which would be covered by any warranty arises but is not addressed by the grantor of the warranty, the Contractor shall be required to act as the guarantor of the obligations under the warranty and to perform under the terms of the warranty.

Section 3.14.2 Contractor warrants that the installation of all materials and equipment shall be in strict accordance with the manufacturers' requirements or specifications and Legal Requirements, as applicable, and that the materials and equipment shall function as required by the Contract Documents and be suitable for their intended purpose. Prior to Final Completion, Contractor shall obtain a statement from the manufacturers of the roofing system and major mechanical equipment, systems and/or components approving Contractor's installation of all such equipment, systems and/or components. If the Department seeks to enforce a claim based upon a manufacturer's warranty and such manufacturer asserts a claim of defective installation by Contractor, Department shall be entitled to assert a claim for defective installation against Contractor regardless of any limitations on time.

Section 3.14.3 If the Contractor fails to commence the cure of any breach of this warranty within after the time specified in a written cure notice that Work is defective or not conforming to the Contract Documents, and if the Contractor fails to provide a written plan and schedule to cure within the time specified in a written notice requesting a cure plan, and if the Contractor fails to initiate the cure within the time specified in the Department's approval of the plan and schedule to cure, and if the Contractor fails to continue with and complete the cure within the approved schedule (or such longer time as may be mutually agreed in writing and such shorter time as Department may direct in case of emergency), then the Department may, without prejudice to other remedies the Department may have, cure such breach of warranty. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of curing such breach, including compensation for the Project Manager's additional services and expenses made necessary by such failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, then the Contractor or its surety shall pay the difference to the Department, subject to the right to appeal and obtain a refund from the Department.

Section 3.14.4 Modifications, extensions, attachments to, completion of or repair to systems in the Work by or on behalf of the Department, including without limitation the

electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Contractor's warranty so long as the same are done in accordance with the original design and installation standards.

Section 3.14.5 The Contractor assigns, with effect not later than the date of final acceptance of the Work by the Department, all manufacturers' warranties relating to materials and labor used in the Work.

ARTICLE 4 LUMP SUM PRICE

Section 4.1 Lump Sum Price. The Contractor shall be paid a lump sum price of \$ _____ .00 (such amount, the "Lump Sum Price") to Fully Complete the Project (CLIN0001).

Section 4.2 Certain Work Included in the Lump Sum Price. The Contractor acknowledges and understands that the Lump Sum Price is based on the Project Scope of Work (**Exhibit A**), and the Drawings & Specifications dated August 15, 2014 (**Exhibit B**) which are incorporated into this contract by reference. It is understood and agreed that the Lump Sum Price represents the Contractor's offer to Fully Complete the Project. The Parties acknowledge and agree that it is their intent to have the Contractor provide all labor, materials and equipment for the build-out of the Department of Forensic Sciences (DFS) Consolidated Forensic Laboratory (CFL) on the 3rd floor at 401 E Street SW, Washington DC Washington DC, 20009 as contemplated in the Bid Set, for the Lump Sum Price and consistent with the Project Schedule. In furtherance of such intent, the Contractor hereby assumes the risks associated with and shall be responsible for (i) any changes in market conditions that affect the cost of labor or materials; (ii) coordination issues between the drawings; (iii) elements of work not shown on the Bid Set, but which are reasonably inferable from the Bid Set; (iv) cost associated with acceleration of the work and expediting of materials necessary to meet the Project Schedule which are the result of anything other than an Excusable Delay; and (v) the risk of subcontractor default or non-performance. It is understood and agreed by the parties that items (i) through (v) listed in the preceding sentence are not intended to be an exclusive list of the risks assumed by the Contractor and that such items represent a partial list of the risks assumed by the Contractor.

Section 4.3 Review of Lump Sum Drawings & Specifications. The Department has selected the Contractor because of its special expertise in constructing similar projects. Before agreeing to the Lump Sum Price, the Contractor reviewed the Bid Set for accuracy, constructability, and completeness and was required to bring such deficiencies to the attention of the Department and its Architect/Engineer to address any such deficiencies. To the extent that any such deficiencies in the Drawings & Specifications could have been identified by such review by a competent Contractor, such deficiencies shall not be the basis for a change in the Lump Sum Price or delaying the Project Schedule.

Section 4.3.1 During the course of the Work, should any errors, omissions, ambiguities or discrepancies be found on the Lump Sum Drawings or in the Specifications, or should there

be found any discrepancies between the Drawings and the Specifications to which Contractor has failed to call attention before agreeing to the Lump Sum Price, the Contractor shall bring any such errors, omissions, ambiguities or discrepancies to the attention of Department, and the Department will interpret the intent of the Drawings and Specifications. Contractor hereby agrees to abide by and to carry out the Work in accordance with the decision of the Department. Wherever the intent of the Drawings or Specifications is not indicated clearly or there is a conflict between the Drawings and Specifications, Contractor will be held to have included in the Lump Sum Price the more expensive material or method of construction and the quantity of material.

Section 4.3.2 If any item or material shown on the Drawings is omitted from the Specifications, or vice versa (except when the Drawings and Specifications clearly exclude such omitted item), and such item or material is required to complete the detail shown or specified, and if additional details or instructions are required to complete the Work, then the Contractor is deemed to have made an allowance in the Lump Sum Price for the completion of the Work, consistent with adjoining or similar details and the best accepted practices of the trade for projects of this type and quality, whichever is more expensive, unless such additional information was not reasonably inferable from the Contract Documents. Without limiting the Contractor's other duties, in the case of a difference among the Contract Documents as to the Contractor's obligations, or an inconsistency in the Contract Documents, the Department will decide which requirement governs; however, the Contractor shall assume that the more expensive material or method of construction and the quantity of material shall be required without a change to the Lump Sum Price.

Section 4.3.3 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined all Contract Documents, including all details, plans, elevations, sections, schedules and diagrams, has visited the site, has become familiar with local conditions under which the Work is to be performed, has correlated personal observations with the requirements of the Contract Documents, and has satisfied himself before executing the Contract as to all matters that can affect the Work and its cost, including: (1) the nature of the land and subsoil; (2) the form and nature of the site and surrounding areas; (3) details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services; (4) the quantities, nature and availability of the materials, tools, equipment and labor necessary for the completion of the Work; (5) the means of access to the site and any accommodation he may require; (6) uncertainties of weather and physical conditions at the site; and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his performance of the Work. The Contractor waives any and all claims against the Department arising from or relating to such contingencies and conditions that are reasonably inferable from the Contract Documents, in light of the required preconstruction review and inspection and the Contractor's expertise in the field of construction.

Section 4.4 **Basis of Lump Sum Price.** The Lump Sum Price is based on the following documents:

Section 4.4.1 Exhibit A: List of Drawings and Specifications dated December 4, 2014

Section 4.4.2 Exhibit B: Offer Letter dated _____

Section 4.4.3 Exhibit C: Davis Bacon Wage Rates

Section 4.4.4 Exhibit D: Subcontracting Plan

Section 4.4.5 Solicitation DCAM-15-CS-0139 as amended, incorporated into this contract by reference.

Section 4.5 Unsafe Materials and Hazardous Materials

Section 4.5.1 The Contractor shall not bring, spill or release onto the site asbestos, PCBs, or any other Hazardous Material that is not customarily used in a facility of the type and similar to the Project, and shall bring to the Department's attention any specification of such Hazardous Materials in the design documents. If the Contractor believes that anything in the Contract Documents would require that it use or bring onto the site asbestos, PCBs, or any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall immediately inform the Department and seek direction before proceeding. The Department shall not be responsible under this Section 3.5 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

Section 4.5.2 The Department shall not be responsible under this Section 3.5 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Department shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Contractor shall indemnify the Department for the cost and expense the Department incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under this Section 4.5.

**ARTICLE 5
DEPARTMENT'S RESPONSIBILITIES**

Section 5.1 Information and Services

Section 5.1.1 The Department will provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Department's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

Section 5.2 Department's Designated Representatives

Section 5.2.1 Chief Contracting Officer (CCO) In accordance with 27 DCMR, Chapter 47, Section 4704 contracts may be entered into and signed on behalf of the District Government only by CCO. The address and telephone number of the CCO is:

Jonathan Kayne
Interim Director/Chief Contracting Officer
Department of General Services
2000 14th Street, N.W. – 8th Floor
Washington, D.C. 20009
Telephone: (202) 727-2800
E-mail:brian.hanlon@dc.gov

Section 5.2.2 Authorized Changes by the Contracting Officer (CO) and the CCO

Section 5.2.2.1 The CCO and the CO are the only persons authorized to approve changes to any of the requirements of the Contract. The CO is authorized to approve changes valued up to \$100,000.00.

Section 5.2.2.2 The Contractor shall not comply with any order, directive or request that changes or modifies the requirements of this Contract, unless issued in writing and signed by the CCO.

Section 5.2.2.3 In the event the Contractor effects any change at the instruction or request of any person other than the CCO, the change will be considered to have been made without authority and no adjustment will be made in the Contract price to cover any cost increase incurred as a result thereof.

Section 5.2.3 Project Manager (PM)

Section 5.2.3.1 The Project Manager is responsible for general administration of the Contract and advising the CCO as to the Contractor's compliance or noncompliance with the Contract. The Project Manager has the responsibility for the day-to-day monitoring and supervision of the Contract, of ensuring the Work conforms to the requirements of the Contract and such other responsibilities and authorities as may be specified in writing by the CCO and/or in the Contract. These include:

Section 5.2.3.1.1 Keeping the CCO fully informed of any technical or contractual difficulties encountered during the performance period and advising the CCO of any potential problem areas under the Contract;

Section 5.2.3.1.2 Coordinating site entry for Contractor personnel, if applicable;

Section 5.2.3.1.3 Reviewing invoices for completed work and recommending approval

by the CCO if the Contractor's prices and costs are consistent with the Contract and progress is satisfactory and commensurate with the rate of expenditure;

Section 5.2.3.1.4 Reviewing and approving invoices for deliverables to ensure receipt of goods and services. This includes the timely processing of invoices and vouchers in accordance with the District's payment provisions and the Contract; and

Section 5.2.3.1.5 Maintaining a file that includes all contract correspondence, modifications, records of inspections (site, data, equipment) and invoice or vouchers.

Section 5.2.3.1.6 The address and telephone number of the Project Manager is:

Henry Miller
Program Manager
Department of General Services
Capital Construction Services Division
1250 U Street, N.W. – 4th Floor
Washington, DC 20009
Telephone: (202) 671-0020
E-mail: henry.miller@dc.gov

Section 5.2.4 The Project Manager shall NOT have the authority to:

Section 5.2.4.1 Award, agree to, or sign any Contract document, change order, change directive, delivery order or task order. Only the CCO shall make contractual agreements, commitments or modifications;

Section 5.2.4.2 Grant deviations from or waive any of the terms and conditions of the Contract;

Section 5.2.4.3 Increase the dollar limit of the Contract or authorize work beyond the scope and dollar limit of the Contract,

Section 5.2.4.4 Authorize the expenditure of funds by the Contractor;

Section 5.2.4.5 Change the period of performance; or

Section 5.2.4.6 Authorize the use of District property, except as specified under the Contract.

Section 5.2.4.7 The Contractor shall be held fully responsible for any changes not authorized in advance, in writing, by the CCO, and may be denied compensation or other relief for any additional work performed that is not authorized by the CCO in writing. In addition, Contractor may also be required at no additional cost to the District, to take all corrective action necessitated by reason of any unauthorized changes.

ARTICLE 6
CLAIMS FOR ADDITIONAL TIME

Section 6.1 Time is of the essence for this Contract.

Section 6.2 The Contractor shall perform the Work so that it achieves Full Completion no later than Twelve (12) weeks from the execution of this agreement by the Department. Unless the failure to achieve Full Completion by the Full Completion Dates is a result of an Excusable Delay, as defined in Section 6.3, the delay shall be deemed Non-Excusable and the Contractor shall not be entitled to an extension of time. Without limiting the generality of the foregoing, delays for the following reasons shall be regarded as Non-Excusable and shall not entitle the Contractor to an extension of time:

Section 6.2.1 Delays due to job site labor disputes, work stoppages, or suspensions of work;

Section 6.2.2 Delays due to adverse weather, unless the Contractor establishes that the adverse weather was of a nature and duration in excess of averages established by data from the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for the Project locale for the ten (10) years preceding the effective date of the Contract. For purposes of this clause, weather shall only be deemed "Excusable" if the weather in question was more severe than that encountered at the Project site over the last ten (10) years for the month in question. Such determinations shall be made based on the number of rain/snow days or the cumulative precipitation total for the month in question. Notwithstanding the foregoing, named storms shall conclusively be deemed "Excusable";

Section 6.2.3 Delays due to the failure of the Contractor or Subcontractors or material suppliers at any tier to perform in timely or proper fashion, without regard to concepts of negligence or fault; or

Section 6.2.4 Delays due to Site conditions whether known or unknown as of the effective date of the Contract, foreseeable or unforeseeable at that time, naturally occurring or man-made; provided, however, that delays due to Differing Soils Conditions or Hazardous Materials Remediation shall be deemed an Excusable Delay.

Section 6.3 **Excusable Delay.** The Contractor shall be entitled to request an adjustment in the Substantial Completion Dates due to an Excusable Delay. The term "Excusable Delay" shall mean:

Section 6.3.1 Delays due to adverse weather other than those that are classified as a Non-Excusable delay;

Section 6.3.2 Delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes of delay that are beyond the control of the Contractor; provided, however,

that in no event shall a Non-Excusable delay or the action of the Contractor, or any of its employees, agents, Subcontractors or material suppliers be deemed an Excusable Delay; or

Section 6.3.3 Delays caused by Differing Soils Conditions or Hazardous Materials Remediation.

Section 6.4 In addition to the forgoing, a delay shall be deemed to be an Excusable Delay only to the extent that such delay (i) warrants an extension in the Substantial or Final Completion Dates; (ii) has not been caused by the Contractor or any of its employees, agents, Subcontractors or material suppliers; (iii) is on Project's critical path; and (iv) is in addition to a time contingency of twenty-one (21) calendar days that is built into the critical path.

Section 6.5 If the Contractor wishes to make a request for an increase in the Contract time, written notice as provided herein shall be given. The Contractor's request shall include an estimate of the cost and of the probable effect of delay on the progress of the Work. In the case of continuing delay, only one claim is necessary.

Section 6.6 In no event shall the Contractor be entitled to an increase in the Lump Sum Price a result of either an Excusable or Non-Excusable Delay.

ARTICLE 7 **COMPENSATION**

Section 7.1 **Compensation.** The Contractor shall be paid its compensation in a series of progress payments and a final payment. Progress payments shall be based on a schedule of values that is agreed upon by the Parties as well as the Project Manager's good faith estimate of the level of completion for each component of the schedule of values.

Section 7.2 **Schedule of Values.** The Contractor shall prepare a Schedule of Values which breaks down the Lump Sum Price for the various parts of the Work. The Schedule of Values shall be maintained in such a manner to provide a breakdown of the Lump Sum Price in enough detail to facilitate continued evaluation of applications for payment and progress reports. Large subcontracts shall be broken into several line items where, in the opinion of the Project Manager, such detail is necessary to properly track the progress of the Work. The proposed Schedule of Values shall also include separate line items for labor and material for those elements of the Work where, in the opinion of the Project Manager, the cost and materials and labor are to be incurred at different points in time during the Project. Such elements of work typically include mechanical systems, vertical transport systems, windows, structural steel. The Contractor and the Project Manager shall meet as necessary to maintain the Schedule of Values for the Project in a manner acceptable to the Project Manager and the Department. No progress payments shall be made unless the then current Schedule of Values is acceptable to the Project Manager and the Department.

Section 7.3 **Retention.** The Department shall withhold from each progress payment an amount equal to ten percent (10%) of each progress payment until such time as fifty percent

(50%) of the Work has been completed at which point the Department may cease retaining against such item. Once Substantial Completion has occurred, the Department will reduce the retention being withheld to an amount that is equal to Two Hundred percent (200%) of the Project Manager's good faith estimate of the remaining Work.

Section 7.4 Documents Required with Application for Payment. Each Application for Payment shall be accompanied by the Contractor's job cost ledgers in a form satisfactory to the Department, the Subcontractors' and Suppliers' Applications for Payment on AIA Documents G702 and G703 or other form acceptable to the Department, and such other supporting documentation as the Department may reasonably request. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Contractor shall nevertheless maintain complete documentation of the costs.

Section 7.5 Contractor's Certification. Each Application for Payment shall be accompanied by the Contractor's signed certification that all amounts paid to the Contractor on the previous Application for Payment that were attributable to Subcontractor Work or to materials or equipment being supplied by any supplier has been paid over to the appropriate Subcontractors and suppliers; that all amounts currently sought for Subcontractor Work or supply of materials or equipment are currently due and owing to the Subcontractors and material or equipment suppliers; and that all Work, materials or equipment for which payment is sought is, to the best of the Contractor's knowledge, free from defect and meets all of the Contract requirements. The Contractor shall not include in an Application Payment amounts for Work for which the Contractor does not intend to pay.

Section 7.6 Lien Waivers. Each Application for Payment shall be accompanied by written waivers of the right to file a mechanic's lien and all other claims for the Contractor and all Subcontractors and material suppliers at all tiers who have supplied labor or material or both for which payment is requested, subject only to receipt of payment. If the Department so requests, the Contractor shall also submit unconditional waivers of liens for itself and all Subcontractors and material suppliers at all tiers with respect to Work or materials or equipment for which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under the Contract, and providing final release of such liens.

Section 7.7 Warranty of Title. By submitting an Application for Payment, the Contractor warrants to the Department that title to all Work for which payment is sought will pass to the Department, without liens, claims, or other encumbrances, upon the receipt of payment by the Contractor. The Department may require execution of appropriate documents to confirm passage of clear title. Passage of title shall not operate to pass the risk of loss with respect to the Work in question. Risk of loss remains with the Contractor until Substantial Completion, unless otherwise agreed by the Department, in writing.

Section 7.8 Submission. On the twenty-fifth (25th) day of each month the Contractor shall submit to the Department (with a copy to the Project Manager) an Application for Payment, which Application for Payment shall cover the entire month during which the Application for Payment is submitted. All amounts formally submitted via Application for Payment and not

disputed by the Department shall be due and payable on the last day of the month following submission or, if that is not a business day, on the following business day.

Section 7.9 Right to Withhold Payments. The Department will notify the Contractor within fifteen (15) days after receiving any Application for Payment of any defect in the Application for Payment or the Contractor's performance which may result in the Department's declining to pay all or a part of the requested amount. The Department may withhold payment from the Contractor, in whole or part, as appropriate, if:

Section 7.9.1 the Work is defective and such defects have not been remedied; or

Section 7.9.2 the Department has determined that the Contractor's progress has fallen behind the Project Schedule, and the Contractor fails, within ten (10) calendar days of the Department's written demand, to provide the Department with a realistic and acceptable plan to recover the delays; or

Section 7.9.3 the Contractor's monthly schedule update reflects that the Contractor has fallen behind the Project Schedule, and the Contractor fails to include, in the same monthly report, a realistic and acceptable plan to recover the delays; or

Section 7.9.4 the Contractor has failed to provide the monthly report in full compliance with Article 7.9 of this Agreement; or

Section 7.9.5 the Contractor has failed to pay Subcontractors or suppliers promptly or has made false or inaccurate certifications that payments to Subcontractors or suppliers are due or have been made; or

Section 7.9.6 any mechanic's lien has been filed against the Department, the site or any portion thereof or interest therein, or any improvements on the site, even though the Department has paid all undisputed amounts due to the Contractor, and the Contractor, upon notice, has failed to remove the lien, by bonding it off or otherwise, within ten (10) calendar days; or

Section 7.9.7 the Department has reasonable evidence that the Work will not be completed by the Substantial Completion Dates, as required, that the unpaid balance of the Lump Sum Price would not be adequate to cover actual or liquidated damages arising from the anticipated delay; or

Section 7.9.8 the Department has reasonable evidence that the Work cannot be completed for the unpaid balance of the Lump Sum Price; or

Section 7.9.9 the Contractor is otherwise in substantial breach of this Contract (including, without limitation, failures to comply with CBE Utilization requirements in Article 11).

Section 7.10 Payment Not Acceptance. Payment of any progress payment or final payment shall not constitute acceptance of Work that is defective or otherwise fails to conform to

the Contract, or a waiver of any rights or remedies the Department may have with respect to defective or nonconforming Work.

Section 7.11 Department Not Obligated to Others. The Department shall have no obligation to pay or be responsible in any way for payments to a consultant or subcontractor performing portions of the Work.

Section 7.12 Final Payment. Final payment shall be made by the Department to the Contractor when (i) Final Completion has been achieved; and (ii) certification by the Contractor that except for requested final payment, all subcontractors and suppliers have been paid in full and that appropriate partial lien releases have been obtained from such subcontractors and suppliers documenting such payments. The Department may, if it so elects, require that copies of all such lien releases be provided as a condition to making final payment.

Section 7.13 No Diversion of Funds. Contractor agrees that the funds it receives for the performance of this Agreement shall be held in trust by Contractor for the benefit of all its Subcontractors, Suppliers, laborers and materialmen, and Contractor shall not itself have any interest in such funds until all these obligations have been satisfied in full. Contractor further agrees that any funds received shall be used exclusively for the prosecution of the Work, and none will be diverted to satisfy other obligations of Contractor. The Department has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Department to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Department shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Department shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. The Department reserves the right to issue joint-payee checks, payable to Contractor and its Subcontractors and materialmen of every tier.

Section 7.14 Interest on Payments. Payments are due and payable in accordance with Article 7 of this Agreement. Amounts unpaid after the date of which payments due shall bear interest in accordance with the Prompt Payment Act.

ARTICLE 8 **CHANGES IN THE WORK**

Section 8.1 Changes Authorized. The Department may, without invalidating the Contract, and without notice to or approval of any surety, order changes in the Work, including additions, deletions or modifications. Any such change must be conveyed by the Department to the Contractor via written Change Directive or Change Order executed on behalf of the Department by the Department's CCO or CO.

Section 8.2 Executed Change Directive/Change Order Required. Only a written Change Directive or Change Order, executed by the Department, may make changes to the Contract. In particular, but without limitation, a written Change Directive or Change Order

executed by the Department is the only means by which changes may be made to the Substantial or Final Completion Date, or the Lump Sum Price.

Section 8.3 Department-Initiated Changes

Section 8.3.1 If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Contractor a written Change Directive, either directing the Contractor to proceed at once with the changed Work or directing it to not to proceed, but to inform the Department, in writing, of the amount, if any, by which the Contractor believes that Substantial or Final Completion Date and/or the Lump Sum Price should be adjusted to take the Change Order or Change Directive into account.

Section 8.3.2 Within ten (10) days of receiving a Change Directive, the Contractor shall provide the Department with a written statement of all changes in the Contract, including, without limitation, any changes to the Substantial or Final Completion Date or the Lump Sum Price to which it believes it is entitled as a result of the Change Directive. If additional time is sought, a schedule analysis supporting the requested extension should be included. The schedule analysis should include a written narrative explanation. If a change in the Lump Sum Price is sought (or if the Department has requested a deduct change), the statement should include a breakdown, by line item, of the estimated cost changes attributable to the proposed change. The Department may request, and the Contractor shall provide, further cost breakdowns, clarifications, documentation or back-up if the Department reasonably believes such additional information is needed to understand and evaluate the request. The additional information required may include cost and pricing data in accordance with the Department's regulations. Any requested adjustment to the Lump Sum Price shall be limited to increased Cost of the Work due to the Change Directive. The Contractor is not entitled to any markup on any kind of change orders. All deductive Change Orders shall include a corresponding reduction in the overhead and profit shown on the Schedule of Values.

Section 8.3.3 If the Department has not yet directed the Contractor to proceed with the Change described by a Change Directive, the Department may rescind it. If the Department wishes to proceed, or has already directed the Contractor to proceed, the Contractor shall immediately proceed with the changed Work and, the Department and the Contractor shall use their good faith best efforts to reach an agreement upon the modifications to the Substantial or Final Completion Date, and/or the Lump Sum Price that are justified by the Change Directive. If they reach agreement, the agreement shall be set forth in a Change Order and the Contractor shall also execute it, at which point it will become binding on both parties.

Section 8.3.4 If the Parties fail to reach an agreement within sixty (60) days after the Department receives the Contractor's detailed statement pursuant to Section 8.3.2, and such other documentation as the Department may request, the Contractor may assert a claim in accordance with this Agreement. In such a case, and subject to adjustment via the claims and disputes process under this Agreement, the Department shall unilaterally grant the Contractor such adjustments, if any, to the Substantial or Final Completion Date, and the Lump Sum Price as the Department has judged to be appropriate.

Section 8.4 Notice of Change Event. The Contractor must give the Department written notice of any Change Event within ten (10) calendar days of the date on which the Contractor knew, or reasonably should have known, of the Change Event. To the extent available, the notice must state the nature of the Change Event and describe, generally, all changes in the Contract to which the Contractor believes it is entitled. Such notice is an express condition precedent to any claim or request for adjustment to the Substantial or Final Completion Date, or the Lump Sum Price arising from the Change Event and, if the notice is not given within the required time, the Contractor will have waived the right to request any adjustment to the Substantial or Final Completion Date or the Lump Sum Price arising from the Change Event.

Section 8.5 Detailed Change Request. Within twenty (20) days after giving notice of a change event, the Contractor shall submit a written change request describing, in reasonable detail, all adjustments it seeks to the Substantial or Final Completion Date or the Lump Sum Price as a result of the Change Event. The change request shall include the same information as described in Section 8.3 with respect to any Contract changes the Contractor seeks due to the Change Event, and the amount of any requested adjustment to the Lump Sum Price Sum shall be limited in accordance with that Section.

Section 8.6 Changes to the Lump Sum Price. Subject to the condition precedent that the Contractor have complied with the notice and documentation provisions of this Article, and subject to the limitations stated in this Agreement, the Contractor will be entitled to request an adjustment to the Lump Sum Price in the following cases:

Section 8.6.1 If the Department issues a Change Directive or Change Order that directs the Contractor to proceed with work which is beyond the scope of Work included within the Lump Sum; or

Section 8.6.2 The Contractor encounters Differing Soil Conditions or Hazardous Materials not identified in the Preconstruction Phase.

Section 8.6.3 For Changes to the Lump Sum Price, the following conditions shall apply:

Section 8.6.3.1 For increases in the Work which the Contractor is permitted to perform by Contractor's own forces, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work; and (ii) a fee (covering home office overhead, field supervision, general conditions and profit) of fifteen percent (15%) of the sum due under (i);

Section 8.6.3.2 For increases in the Work performed by Subcontractors, the Lump Sum Price shall be increased by the sum of: (i) the Direct Cost of the Work incurred by the Subcontractor for the changed Work; (ii) a fee (covering home office overhead and profit) equal to fifteen percent (15%) of the sum due under (i) above for the Subcontractor performing such Work; and (iii) a fee (covering the Contractor's home office overhead, field supervision, general conditions and profit) of five percent (5%) of the sum of items (i) and (ii). Intervening tier Subcontractors shall be entitled to a mark-up of five percent (5%) (covering home office

overhead, field supervision, general conditions and profit); provided, however, that in all situations and regardless of the number of tier Subcontractors involved, the maximum mark-up on the Direct Cost of the Work shall be twenty five percent (25%) and provided, further, that the Contractor shall not be entitled to the markup referred to in item (iii) on changes unless such changes exceed, either individually or in the aggregate, five percent (5%) of the Lump Sum Price.

Section 8.6.3.3 When both additions and credits are involved in any one change in the Work, the Contractor's Change Order and markup shall be figured on the basis of the net increase, if any.

Section 8.6.3.4 Fee will not be paid by Department for overtime or weekend work unless overtime is requested in writing and approved in writing by Department.

Section 8.6.3.5 The amount of credit to be allowed by Contractor to Department for a deletion or change which results in a net decrease in the Lump Sum Price shall be the Cost avoided as confirmed by Department plus Five percent (5%) for profit on the deleted work.

Section 8.6.4 If the cost to Department of changed Work is determined by the lump sum method, Contractor warrants that the charge to Department shall not exceed the sum of: (a) any Subcontractor's charge to Contractor for such work; and (b) Contractor's best estimate of the actual cost of Contractor's work plus the permitted markup. If the cost to Department of changed Work is determined on a time and materials basis, Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted markup, of such addition to Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed Work will result in a reduction in the cost to Department, Contractor warrants that the amount of any deduction shall represent the amount of deduction to Contractor by the appropriate Subcontractor or the amount of Contractor's best estimate where the deduction involves Work which Contractor will perform.

Section 8.7 Deductive Change Orders. The Department is likewise entitled to issue deduct Change Orders (reducing the Lump Sum Price) when changes are effected, by Change Directive or otherwise, which will decrease the cost of completing the Work or the time within which it can be completed.

Section 8.8 Executed Change Orders Final. The Contractor agrees that any Change Order executed by the Department and Contractor constitutes its full and final adjustment for all costs, delays, disruptions, inefficiencies, accelerations, schedule impacts, or other consequences arising from the change in question, whether a Change Directive, or a Change Event, or from any claimed cumulative effect of changes made to the date of the Change Order, and that no further adjustments in compensation or time shall be sought or made with respect to the Change Directive or the Change Event giving rise to the Change Order.

Section 8.9 Failure to Agree. If the Contractor claims entitlement to a change in the Contract, and the Department does not agree that any action or event has occurred to justify any

change in time or compensation, or if the Parties fail to agree upon the appropriate amount of the adjustment in time or compensation, the Department will unilaterally make such changes, if any, to the Contract, as it determines are appropriate pursuant to the Contract. The Contractor shall proceed with the Work and the Department's directives, without interruption or delay, and shall make a claim as provided in Article 12. Failure to proceed due to a dispute over a change request shall constitute a material breach of the Contract and entitle the Department to all available remedies for such breach, including, without limitation, termination for default.

ARTICLE 9
LIQUIDATED DAMAGES

If the Contractor fails to achieve Substantial Completion by the Substantial Completion Dates, the parties acknowledge and agree that the actual damage to the Department for the delay will be impossible to determine, and in lieu thereof, the Contractor shall pay to the Department, as fixed, agreed and liquidated delay damages in the amount of Two Thousand Eight Hundred Forty Dollars (\$2,840.00) per day for each calendar day of delay for failure to meet the Substantial Completion Dates. The Contractor and the Department agree that the liquidated damages do not constitute and shall not be deemed a penalty, but represent a reasonable approximation of the damages to the Department associated with a delay in the Project.

ARTICLE 10
INSURANCE AND BONDS

Section 10.1 Insurance Required by the Project

Section 10.1.1 The Contractor will be required to maintain the following types of insurance throughout the life of the Contract.

Section 10.1.1.1 Commercial General Liability Insurance (“Liability Insurance”) against liability for bodily injury, death, and property damage. The Liability Insurance shall include, but not be limited to: premises-operations; broad form property damage; products and completed operations; person and advertising injury; contractual liability and independent contractors. Such Liability Insurance shall be in amounts not less than Two Million Dollars (\$2,000,000.00) per occurrence; Two Million Dollars (\$2,000,000.00) from aggregate of all occurrences within each policy year. The Liability Insurance policy coverage shall include the District of Columbia, the Department and its officers, agents and employees as additional insureds, shall be primary and non-contributory with any other insurance maintained by the District of Columbia, and shall contain a waiver of subrogation. The Contractor shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed under this Contract.

Section 10.1.1.2 Workers’ Compensation and Employers Liability coverage providing statutory benefits for all persons employed by the Contractor, or its contractors and subcontractors at or in connection with the Work.

Section 10.1.1.3 Automobile Liability, including Hired and Non-Owned Auto Liability in

the amount of at least One Million Dollars (\$1,000,000) for each occurrence for bodily injury and property damage.

Section 10.1.1.4 Umbrella or Excess Liability coverage in the amount of at least Four Million Dollars (\$4,000,000) per occurrence, with the District of Columbia, the Department and its officer, agents and employees as additional insureds.

Section 10.1.1.5 Builder's Risk insurance written on an "all risk" basis and covering the value of the improvements being constructed. This coverage does not need to be maintained until such time as construction operations begin.

Section 10.1.2 Each insurance policy shall be issued in the name of the Contractor and shall name as additional insured parties the Department and the District of Columbia, and the officers, agents and employees of each. Such insurance shall not be cancelable or reduced without thirty (30) days prior written notice to the Department.

Section 10.1.3 All such insurance policies shall contain a waiver of subrogation against the Department and the District of Columbia, and their respective officers, agents and employees.

Section 10.1.4 All such insurance policies shall be written by a company that is rated at least A- by A.M. Best and having a surplus size rating of at least XV.

Section 10.2 Performance Bond and Payment Bond. The Contractor shall, before commencing the Construction Phase, provide to the Department a payment bond and performance bond, each with a penal sum equal to 5% of the Bidder's lump sum price. Such bond shall remain in full force and effect until Final Completion is achieved and the Department shall be able to draw upon such bond regardless of the amount paid by the Department to the Contractor, even if such amount exceeds the penal value of such bond. Unless otherwise directed by the Department, the Contractor shall require all Subcontractors whose Subcontract prices exceed One Hundred Thousand Dollars (\$100,000) to provide payment and performance bonds, with a penal sum equal to one hundred percent (100%) of the subcontract price. All bonds must be in a form acceptable to the Department, its lenders or bond trustee, and issued by a surety authorized to do business in the District of Columbia and bonding company listed on the United State Department of Treasury's Listing of Approved Sureties. All subcontractors' bonds must include a dual obligee rider, naming the Contractor and the Department as dual obligees. If the Lump Sum Price is increased pursuant to the terms of the Contract, the Department may require that the amount of the bonds be increased in the amount of one hundred percent (100%) of the increase, and the Contractor shall promptly comply. The Contractor shall furnish a copy of its bonds to any potential beneficiary of the bonds, or permit that person or company to make a copy. If the bonds provided become unacceptable to the Department, the Contractor shall promptly provide substitute security acceptable to the Department. If the Contractor intends to exercise its rights as dual obligee under any trade Subcontractor's bond, it shall first give the Department twenty (20) days written notice, so that the Department may lodge any objection it may reasonably have to the proposed action.

ARTICLE 11
ECONOMIC INCLUSION REQUIREMENTS

Section 11.1 LSDBE Utilization.

Section 11.1.1 The Department requires that business enterprises so certified by the Department of Small and Local Business Development Enterprises (DSLBDDE) participate in at least 50% of the Project. In addition, 35% must be awarded to certified Small Business Enterprises (SBE) and 20% to Disadvantaged Business Enterprises (DBE) provided however, that the costs of materials, goods, and supplies shall not be counted towards the subcontracting requirement unless such materials, goods, and supplies are purchased from certified small business enterprises.

Section 11.1.2 If there are insufficient qualified small business enterprises to completely fulfill the requirement of paragraph 11.1.1, then the subcontracting may be satisfied by subcontracting 50% of the dollar volume to any certified business enterprises; provided, however, that all reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall subcontracting work.

Section 11.1.3 A prime contractor which is certified as a small, local, or disadvantaged business enterprise shall not be required to comply with the provisions of sections 11.1.1 and 11.1.2.

Section 11.1.4 Neither the Contractor or a Subcontractor may remove a Subcontractor or tier-Subcontractor if such Subcontractor or tier-Subcontractor is certified as an Local, Small or Disadvantaged Business Enterprise (LSDBE) unless the Department approves of such removal. The Department may condition its approval upon the Contractor developing a plan that is, in the Department's sole and absolute judgment, adequate to maintain the level of LSDBE participation on the Project as required under this Contract.

Section 11.2 Equal Employment Opportunity and Hiring of District Residents

Section 11.2.1 The Contractor shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

Section 11.2.2 The Contractor shall ensure that at least fifty-one percent (51%) of the Contractor's Team and every subconsultant's and Subcontractor's employees hired after the effective date of the Contract, or after such subconsultant or Subcontractor enters into a contract with the Contractor to work on the Project, shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

Section 11.3 Economic Inclusion Reporting Requirements

Section 11.3.1 Upon execution of the Contract, the Contractor and all its member firms, if any, and each of its Subcontractors shall submit to the Department a list of current employees and apprentices that will be assigned to the Contract, the date they were hired and whether or not they live in the District of Columbia.

Section 11.3.2 The Contractor and its constituent entities shall comply with subchapter X of Chapter II Title 2, and subchapter II of Chapter 11 of Title 1 of the D.C. Code, and all successor acts thereto and the rules and regulations promulgated thereunder. The Contractor and all member firms and Subcontractors shall execute a First Source Agreement with the District of Columbia Department of Employment Services (“DOES”) prior to beginning Work at the Project site.

Section 11.3.3 The Contractor shall maintain detailed records relating to the general hiring of District of Columbia and community residents.

Section 11.3.4 The Contractor shall be responsible for: (i) including the provisions of this Section 11.3 in all subcontracts; (ii) collecting the information required in this Section 11.3 from its Subcontractors; and (iii) providing the information collected from its Subcontractors in the reports required to be submitted by the Contractor pursuant to Section 11.3.

Section 11.4 Compliance with the Apprenticeship Act. The Contractor agrees to comply with the requirements of the Apprenticeship Act of 1946, D.C. Code §§ 36-401, *et seq.* It is understood and agreed that thirty five percent (35%) of all apprentice hours the Project must be District residents. If the Builder or any of its subcontractors fail to use its best efforts to meet this goal, the Builder or the subcontractor shall be subject to a penalty of five percent (5%) of the labor costs associated with the Contract.

ARTICLE 12 **CLAIMS & DISPUTE RESOLUTION**

Section 12.1 Notice of Claim. If the Contractor has complied with all provisions in Article 8 regarding changes, and the Department has denied the changes requested in a written Change Proposal, or has failed to respond to a written Change Proposal within thirty (30) days, and the Contractor wishes to pursue a claim over the disputed item, it shall inform the Department’s Chief Contracting Officer, in writing, of its claim. The notice must be delivered to the Department within fifteen (15) days of the Department's decision, or within thirty (30) days of the written request for a Change Order, if the Department has failed to respond to the request. If the Contractor wishes to assert a claim, as such term is defined in the General Conditions, over a dispute not arising from matters related to a Change Event, Change Order or Change Directive, the written notice of claim must be delivered to the Department’s Chief Contracting Officer within fifteen (15) days of the date the Contractor knew or should reasonably have known of the events giving rise to the claim. All claims must be submitted pursuant to the procedures set forth in section 4733 of the Department’s procurement rules and section 908 of the District’s *Procurement Practices Reform Act of 2010* (PPRA).

Section 12.2 Contents of Notice of Claim. The notice of claim shall state the nature of the claim, the events or circumstances giving rise to the claim, the type of relief requested, and the amount of time or additional compensation, or other damages sought. If the amount of time, compensation, or other damages sought is not reasonably ascertainable at the time, the Contractor shall so state, explain why, and provide whatever estimates it can reasonably provide. The notice shall state clearly that the Contractor intends to assert a claim against the Department under this Contract.

Section 12.3 Appeal Procedures. All claims arising under or in connection with the Contract or its breach, or relating to the Project, whether framed in contract, tort or otherwise, and which are not resolved via the claims process may be resolved by filing an appeal with the District of Columbia Board of Contract Appeals in accordance with Title X of the PPRA. However, if a third party brings any claim or suit against the Department, including, without limitation, claims of infringement of patents, copyrights or other intellectual property rights, the Department may bring an action for defense or indemnification against the Contractor in the court in which such claim or suit is being litigated.

ARTICLE 13 **MISCELLANEOUS PROVISIONS**

Section 13.1 Extent of Contract. The Contract, which includes this Agreement and the exhibits attached hereto, and other documents incorporated herein by reference, represents the entire and integrated agreement between the Department and Contractor and supersedes all prior negotiations representations or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Department and Contractor. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

Section 13.2 Conformance with Laws. It shall be the responsibility of the Contractor to perform the Contract in conformance with the Department's Procurement Rules (27 DCMR § 4700 *et seq.*) and all statutes, laws, codes, ordinances, regulations, rules, requirements and orders of governmental bodies, including, without limitation, the U.S. Government and the District of Columbia government; and it is the sole responsibility of the Contractor to determine the Procurement Regulations, statutes, laws, codes, ordinances, regulations, rules, requirements and orders that apply and their effect on the Contractor's obligations thereunder.

Section 13.3 Governing Law. The Contract shall be governed by and construed in accordance with the laws of the District of Columbia, without regard to its conflict of laws principles.

Section 13.4 Assignment. The Department and Contractor respectively bind themselves, their partners, members, joint venturers, constituent entities, successors, assigns and legal representative to the other party hereto and to partners, members, joint venturers, constituent entities, successors, assigns and legal representatives of such other party in respect to

covenants, agreements and obligations contained in the Contract. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

Section 13.5 Retention of Records and Inspections and Audits

Section 13.5.1 The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under the Contract in accordance with generally accepted professional practice and appropriate accounting procedures and practices consistently applied in effect on the date of execution of the Contract.

Section 13.5.2 The Contractor shall also maintain the financial information and data used in the preparation and support of the costing and cost summary submitted to the Department and the required cost submissions in effect on the date of execution of the Department.

Section 13.5.3 The Department, the District of Columbia government, the District of Columbia Financial Responsibility and Management Assistance Office, the Comptroller General of the United States, the U.S. Department of Labor and any of their authorized representatives shall have access to the books, records, documents and other evidence held, owned or maintained by the Contractor for the purpose of inspection, audit and copying during normal business hours and upon advance written notice to the Contractor. The Contractor shall provide proper facilities for such access and inspection.

Section 13.5.4 The Contractor agrees to include the wording of this Section in all its subcontracts in excess of five thousand dollars (\$5,000) that directly relate to Project performance.

Section 13.5.5 Audits conducted pursuant to this Section will be in accordance with generally acceptable auditing principles and established procedures and guidelines of the applicable reviewing or audit agency.

Section 13.5.6 The Contractor agrees to the disclosure of all information and reports, resulting from access to records, to any authorized representative of the Department. Where the audit concerns the Contractor, the auditing agency will afford the Contractor an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report will include the written comments, if any, of the audited parties.

Section 13.5.7 The Contractor shall preserve all records described herein from the effective date of the Contract completion and for a period of seven (7) years after a final settlement. In addition, those records which relate to any dispute, appeal or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until seven (7) years after the date of resolution of such dispute, appeal, litigation, claim or exception.